IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13077 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ONGC ELECTRICAL AND ALLIED STAFF ASSOCIATION

Versus

GOVT OF INDIA,MINISTRY OF LABOUR,RAFI MARG

Appearance:

1. Special Civil Application No. 13077 of 2000

MR BS MISHRA for Petitioner No. 1

MR MUKESH R SHAH for Respondents No. 1-2

MR RR MARSHALL for Respondent No. 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner, a trade union,

has sought to challenge the order dated 10.11.2000 of the respondent No.1 Government, whereby, reference of the industrial dispute is refused for the following reason:

> "The dispute was raised belatedly without furnishing adequate reasons to justify the delay".

2. According to the relevant facts as stated in the petition, one Mr.Israr Husein was, after completion of his apprenticeship course from 20.7.1987 to 26.7.1988, appointed as Assistant Technician (Electrical) from 8.2.1990 and subsequently promoted as per the rules and regulations of the employer (ONGC), even as the other apprenticeship trainees, who had undergone the same apprenticeship course, were also posted on different posts in the same pay scale. After about 12 years, by a representation dated 8.3.2000, a grievance was made that on account of his higher qualification of ITI, Mr.Israr Husein should have been appointed as Junior Engineer (Electrical) with effect from 27.7.1988. The demand made by the Union on behalf of the workman concerned was resisted by the employer during the conciliation proceedings. Ultimately, the Reference of the dispute was refused by the aforesaid impugned order only on the ground of delay, particularly in absence of any adequate reasons to justify the delay.

3. The learned counsel for the petitioner vehemently argued that the petitioner had a very good case and gross injustice was done to him which was required to be adjudicated by an independent forum under the industrial law. As regards the inordinate delay and absence of any justification therefor, it was submitted that no opportunity to explain the delay was given by the authority and on that account, the impugned order was made without application of mind and in violation of the principles of natural justice. It was in this context also submitted that had an opportunity been given, the petitioner could have furnished sufficient reasons explaining the delay in approaching the Government for reference of the dispute.

4. The learned counsel for the respondent relied upon the recent judgment of the Supreme Court in NEDUNGADI BANK LTD. v. K.P.MADHAVANKUTTY [AIR 2000 SC 839] and SAPAN KUMAR PANDIT v. U.P.STATE ELECTRICITY BOARD [2001 AIR SCW 2685]. It is now well-settled that the order of the appropriate Government making or refusing to make a reference is an administrative order and not a judicial or quasi-judicial one, that no lis is

involved and as such the order is made on the subjective satisfaction of the Government. It is also held in NEDUNGADI BANK LTD. (supra) that the power to refer is to be exercised reasonably and in a rational manner. In that case, there appeared to be no rational basis on which the Central Government had exercised the power after a lapse of about seven years after dismissal of the workman. It is in terms held by the Honourable Supreme Court that a dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. The Supreme Court has also expressed the view in TELCO CONVOY DRIVERS MAZDOOR SANGH v. STATE OF BIHAR reported in AIR 1989 SC 1565 that there may be exceptional cases in which the State Government may on proper examination of the demand come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. In a recent judgment of this Court in SAURASHTRA EMPLOYEES UNION v. SUB-DIVISIONAL OFFICER reported in 2000 (2) GLR 1259, the question directly in issue was whether a reference could be refused only on the ground of delay and, after referring to the Constitution Bench judgment of the Supreme Court in the case of STATE OF BOMBAY v. K.P.KRISHNAN reported in AIR 1960 SC 1223, it was noted that it was open to the Government to enquire whether the dispute raised a claim which was very stale or which was opposed to the provisions of the Act. In a case where the claim made was patently frivolous or was clearly belated, the Appropriate Government could refuse to make a reference. Thus, it was found and held that the authority had the power under Section 10 of the Act to refuse to make a reference only on the ground of inordinate delay particularly when no justification for the delay had either been substantiated or offered. Following this line of judgments, this Court has in Special Civil Application No.6634 to 1999 taken the view that the demands and disputes which are inordinately delayed and where no plausible justification has been furnished by the petitioner to explain the delay, the orders refusing to make reference of stale demands are proper and legal.

5. The legal position is now further clarified by the recent judgment of the Supreme Court in the case of SAPAN KUMAR PANDIT (supra) on which the learned counsel for the petitioner also relied. The erudite discussion on the subject in the said judgment is found in the following words:

"8. .....Though no time limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a

dispute which had submerged in stupor by long lapse of time and re-kindled by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.

Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative, then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms, the Government could have exercised the power whatever be the range of the period which lapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed on the possibility of what another party would think whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference there is a presumption that in the opinion of the Government there existed such a dispute."

6. In the facts of this case, for a grievance and demand supposedly arising in the year 1988, the petitioner appears to have, for the first time, moved the

appropriate authorities in March, 2000 for raising and referring the dispute without any explanation for the lapse of the intervening period. Therefore, the case is squarely covered by the ratio of the judgments discussed hereinabove. Accordingly, the petition having no substance, the same is dismissed at the threshold. Notice is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)